

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

UNITED STATES OF AMERICA,

Plaintiff,

v.

TIMOTEO UPIA-FRIAS, JUAN
GONZALEZ-ENCARNACION, and ABEL
LOGAT LAGUE

Defendants.

Criminal No. 2007-65

ATTORNEYS:

Delia L. Smith, AUSA

St. Thomas, U.S.V.I.

For the plaintiff.

Jesse A. Gessin, AFD

St. Thomas, U.S.V.I.

For defendant Timoteo Upia-Frias.

George H. Hodge, Jr., Esq.

St. Thomas, U.S.V.I.

For defendant Juan Gonzalez-Encarnacion.

J. Daryl Dodson, Esq.

St. Thomas, U.S.V.I.

For defendant Abel Logat-Lague.

ORDER

GÓMEZ, C.J.

Before the Court is the motion of defendant Abel Logat Lague ("Lague") to exclude the government's evidence at trial. Lague contends that the government has violated discovery deadlines set by this Court.

On December 19, 2007, the Court held a status conference in

this matter. At that status conference, the Court ordered that all discovery take place no later than December 26, 2007. The government failed to submit all discoverable materials to Lague by that date. Certain materials were submitted at some point after that date.¹ Missing from those tardily-submitted materials were four CD/DVDs containing audio and video recordings. The government did not submit those recordings to Lague until January 16, 2008. The government contends that the recordings were inaudible, and that audible copies did not become available until January 15, 2008.

Rule 16 of the Federal Rules of Criminal Procedure addresses discovery in criminal proceedings. That rule provides a court with the authority to "prescribe such terms and conditions as are just" to remedy a violation of a discovery order. FED. R. CRIM. P. 16(d)(2); *see also United States v. Bein*, 214 F.3d 408, 413 (3d Cir. 2000). Specifically, Rule 16(d)(2) states that the court, on becoming aware of a party's discovery violation, "may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances." FED. R. CRIM. P. 16(d)(2); *see also*

¹ The parties dispute whether those materials were submitted on December 27, 2007, or at some time in early January, 2008.

United States v. Lopez, 271 F.3d 472, 483 (3d Cir. 2001).

"In exercising the broad discretion as to sanctions . . . , the Court should take into account the reasons why disclosure was not made, the extent of prejudice, if any, to the opposing party, the feasibility of rectifying that prejudice by a continuance, and any other relevant circumstances." *United States v. Medina*, Crim. No. 80-117, 1980 U.S. Dist. LEXIS 14105, at *4 (D.V.I. Oct. 10, 1980) (citation omitted). Moreover, "[a] trial court should . . . 'impose the least severe sanction that will accomplish prompt and full compliance with the discovery order.'" *Jacobs v. Gov't of the Virgin Islands*, 53 Fed. Appx. 651, 652 (3d Cir. 2002) (quoting *United States v. Ivy*, 83 F.3d 1266, 1280 (10th Cir. 1996)).

In this matter, the government has supplied what appears to be a plausible explanation for its nearly three-week delay in submitting the recordings. The government has not, however, provided any reason for its failure to submit other discovery materials by the December 26, 2007, deadline. Despite the government's violations of that deadline, there are compelling factors in this matter that weigh against exclusion. First, the Court has continued the trial of this matter for two weeks. That additional time will diminish any prejudice potentially wrought by the government's violations by affording Lague and his co-

defendants an adequate opportunity to review the recordings and other discovery materials and to prepare their defense. *See, e.g., Gov't of the Virgin Islands v. Ubiles*, 317 F. Supp. 2d 605, 609 (D.V.I. App. Div. 2004) (noting that "the government's violation of the trial judge's discovery order could have been remedied by granting a continuance"); *Virgin Islands v. Fahie*, 304 F. Supp. 2d 669, 677 (D.V.I. 2004) (same). Second, the Court's grant of a continuance in this matter obviates the need for the severe sanction of exclusion. *Cf. Virgin Islands v. Blake*, 118 F.3d 972, 978 (3d Cir. 1997) (finding that the trial court did not abuse its discretion in excluding evidence on account of the government's discovery violations). Indeed, given the seriousness of the charges against the defendants in this matter, excluding the evidence against them could hinder the government from seeking "vindication of the rights of the public." *See, e.g., Gov't of the Virgin Islands v. Motta*, Crim. Nos. 80-46 and 80-42, 1980 U.S. Dist. LEXIS 8940, at *12 (D.V.I. June 12, 1980).

While the Court will decline to exclude the government's evidence in this matter -- or to impose other sanctions -- the Court does not take the government's discovery violations lightly. In this matter, as well as in several other matters pending before the Court, the government has engaged in a

consistent pattern of treating this Court's discovery orders as mere suggestions. The Court thus takes this opportunity to remind the government of its obligation, like that of any litigant in this Court, to comply strictly with such orders. See, e.g., *Littlejohn v. BIC Corp.*, 851 F.2d 673, 683 (3d Cir. 1988) (noting the importance of "[s]crupulous compliance with court discovery orders"); see also *Update Art, Inc. v. Modiin Publishing, Ltd.*, 843 F.2d 67, 73 (2d Cir. 1988) (emphasizing "the importance we place on a party's compliance with discovery orders" and warning that "[a] party who flouts such orders does so at his peril"); *Miltope Corp. v. Hartford Casualty Ins. Co.*, 163 F.R.D. 191, 192 (S.D.N.Y. 1995) (reminding "the Bar and litigants that discovery deadlines must be complied with").

For the reasons stated above, it is hereby

ORDERED that Lague's motion to exclude the government's evidence is **DENIED**.

Dated: February 1, 2008

S_____
CURTIS V. GÓMEZ
Chief Judge

Copy: Delia L. Smith, AUSA
Jesse A. Gessin, AFD
George H. Hodge, Jr., Esq.
J. Daryl Dodson, Esq.